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April 30, 2004

Corbin Davis  
Clerk  
Michigan Supreme Court  
P. O. Box 30052  
Lansing, MI 48909

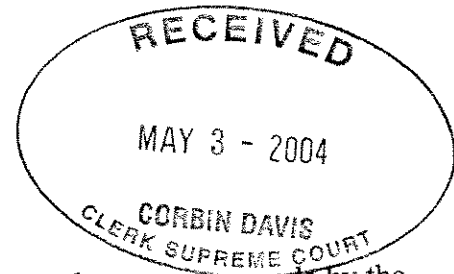
Re: Proposed amendments to court rules  
Administrative File No. 2003-04

Dear Mr. Davis,

I have read the proposed amendments to the court rules and endorse the responses made by the Criminal Defense Attorneys of Michigan. I write to add what I believe to be an important observation regarding one proposed amendment.

**6.310 (C) and 429 (B)(3) Reducing the Time for Filing Motions to Withdraw Plea and to Correct Sentence**

The CDAM response rightly notes the many delays which can take place prior to the time an appointed counsel has the necessary record. While preparing a motion to withdraw a plea or for a resentencing at that point may take less time than to prepare an appellate brief in a trial case, there remain the delays inherent in communicating with a client, who may be in the Upper Peninsula, in then contacting potential witnesses, and finally in getting an informed decision from the client after such investigation. Motions to withdraw guilty pleas or seeking a resentencing frequently involve serious risk assessments which are less present in appeals from trial convictions. Reducing the time in which to file such appeals would reduce the efficiency with which such appeals could be handled as travel for visits and hearings could be less easily delayed and thus combined. It could also result in filing of more motions to preserve potential issues where counsel has insufficient time or contact with the defendant to get an informed agreement to dismiss.

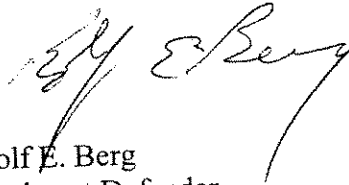


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A serious implication of the proposed amendment is that it does not merely reduce the time for raising such issues from 12 months to 6 months. As part of the 12 month rule there is a provision -- MCR 7.205(F)(4) -- assuring that a defendant who requests counsel within that time will have 42 days from the appointment of counsel and preparation of a transcript to file an application. This similarly permits a trial court motion to withdraw a plea or for a resentencing within that time. But, under the proposed amendment, a defendant could request counsel on the day of sentencing and still be limited to the restrictions of a motion for relief from judgment if the trial court fails to appoint counsel within 6 months.

For these reasons I oppose any change in the current rules. If there is to be any restriction in the current time limits for filing these motions, it should include a provision excluding the delays in appointing counsel and preparing a timely requested record.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Rolf E. Berg', with a long, sweeping horizontal stroke extending to the right.

Rolf E. Berg  
Assistant Defender

REB.jd